IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.A.No.515 SB OF 1995
Date of decision:24.4.2007

Dharambir and another

…..Appellants

v.

State of Haryana

…..Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

Present: Mr.JV Yadav, Advocate, for the appellants.

Mr. JS Toor, Addl.A.G.Haryana.

JUDGMENT:

The appellants challenge their conviction and sentence awarded by the trial Court in the following terms:-

Name of the accused	Office for which convicted.	Sentence
Dharambir	(i) Under Section 325 IPC	RI for two years and fine of Rs.1000/-, in default, to undergo further RI for three months.
	(ii) Under Sections 323/34 IPC	RI for one year and fine of Rs.500/-, in default, to undergo further RI for one month.
Vijay	(i) Under Sections 325/34 IPC	RI for two years and fine of Rs.1000/-, in default, to undergo further RI for three months.

(ii)	Under Sections 323/34 IPC	RI for one year and fine of Rs.500/-, in default, to undergo further RI for one month.

The substantive sentences are to run concurrently. Out of fine, Rs.2000/- are to be paid to the injured Mahabir.

Case of the prosecution is that on 28.9.1991 at 4 PM, PW4 Duli Chand was going to plough his field on the tractor of Ramphal, which was driven by Tej Pal. Mahabir PW6 was working as a Chowkidar at Ansal's farm adjacent to the field of Duli Chand. Cattle of the accused Dharambir and Vijay entered Ansal's farm, which was protested by Mahabir. There was exchange of hot words. Dharambir gave a 'lathi' blow on the head of Mahabir and Vijay gave a 'lathi' blow on the back side of left shoulder of Mahabir Dharambir gave another blow on the left shoulder of Mahabir. Duli Chand and Tej Pal rescued Mahabir and got him admitted to General Hospital, Gurgaon. On receiving intimation from the hospital Ex.PB, Dharampal HC reached the hospital and sought the opinion of the doctor but since Mahabir was not fit to make statement, PW10 ASI Siri Ram recorded the statement of PW4 Duli Chand on 29.9.1991 Ex.PF, on the basis of which FIR was registered. PW10 ASI Siri Ram prepared rough site plan. Injured Mahabir was referred to Safdarjang Hospital, Delhi on

30.9.1991 at 12.30 PM. The accused were arrested on 3.10.1991. Vijay got recovered 'lathi' Ex.P3 in pursuance of disclosure statement Ex.PO. Dharambir got recovered 'lathi' Ex.P4 in pursuance of disclosure statement Ex.PN. Mahabir was referred to All India Institute of Medical Sciences, New Delhi. PW10 ASI Siri Ram sought to record statement of Mahabir on 4.10.1991. Since the patient was not fit to make statement, his statement was finally recorded on 10.10.1991. After completion of investigation, the accused were sent up for trial.

The prosecution examined PW1 Dr. S.K.Sharma, who medico-legally examined Mahabir on 28.9.1991 at 8.35 PM and found following injuries on his person:-

> "1.There was fresh bleeding abrasion 4 cm x 2 cm. In the left side upper middle part of the head and adjoining area and the area around was softened and cedamatous X-Ray was advised.
>
> 2. There was 6 cm x 2 cm reddish rail road pattern contusion in the back of the left shoulder.
>
> 3. There was 1 cm x 1 cm abrasion on the back of the right shoulder."

PW2 Dr. B.B.Aggarwal radiologically examined Mahabir and found linear fractures on the left parietal area and frontal area of skull. PW3 Gian Chand prepared the site plan. PW4 Duli Chand, PW5 Tej Pal are the eye witnesses. PW6 Mahabir is the injured. PW7 Dr. P.Kumar and PW8 Dr. C.C.Verma proved

their reports. PW9 Dr. Abhay Verma deposed that Mahabir was admitted to All India Institute of Medical Sciences, New Delhi, on 30.9.1991 with head injury and was discharged on 8.10.1991.

The accused denied the prosecution allegations and examined DW1 Mahender Singh.

After considering the evidence on record, the trial court held the case of the prosecution to be fully proved. It was held that eye witness account given by PW4 Duli Chand, PW5 Tej Pal and PW6 Mahabir was consistent and reliable. Their evidence remained unshaken in cross-examination. There was no dispute about identity. The occurrence took place in broad day light. Medical evidence corroborated the ocular version. PW6 Mahabir was seriously injured and remained in hospital for more than 10 days and was referred to AIIMS, New Delhi, on account of seriousness of head injury. He will be last person to leave out the real culprits and falsely implicate the appellants. Mere fact that Duli Chand PW4 and Tej Pal PW5 were collaterals of injured Mahabir PW6, as deposed by DW1 Mahender Singh, did not affect the veracity of their version.

I have heard learned counsel for the appellants and perused the record.

Learned counsel for the appellants submitted that there was delay in lodging the FIR and the witnesses were related to the

injured and therefore, the version of the prosecution should not be accepted.

There is no merit in the contention raised. Injured Mahabir PW6 was immediately admitted to the Hospital with serious head injury, as deposed by PW1 Dr. SK Sharma who conducted medico-legal examination on 28.9.1991 at 8.35 PM. The police was immediately informed and opinion of the doctor was sought and since Mahabir was seriously injured and he was unfit to make statement, FIR was not immediately recorded. In these circumstances, delay could not be held to be of any significance.

It is well-settled that mere delay in lodging the FIR is not enough to reject the prosecution version, unless there are indications of fabrication. Delay is a safeguard against fabricated version. Only effect of delay is that the Court must closely scrutinise the evidence. Reference may be made to the law laid down by the Hon'ble Supreme court in **Tara Singh and others v. The State of Punjab**, AIR 1991 SC 63.

It is equally well-settled that evidence of prosecution witnesses cannot be rejected merely on account of their being related to the victim. In **Bhupendra Singh v. State of Punjab,** AIR 1968 SC 1438, their lordships of the Apex Court observed that the fact that the prosecution witnesses in a murder trial were sons and daughters of the victim, does not detract from the value to

be attached to their evidence because naturally enough they are interested in seeing that the real murderer of their father is convicted of the offence and they could not be expected to adopt a course by which some innocent persons would be substituted for the person really guilty of the murder. In fact, their feelings would be strongest against the real culprit. As such their evidence cannot be discarded on the ground of their relation with the deceased. Similar view was taken in **Barati v. State of UP**, AIR 1974 SC 839 and **Mst. Dalbir Kaur and others v. State of Punjab**, AIR 1977 SC 472.

Evidence of PW4 Duli Chand, PW5 Tej Pal and PW6 Mahabir being consistent and straight-forward, which remained unshaken during cross-examination, the occurrence being in broad day light and there being no dispute about identity of the accused, there is no reason whatsoever to reject the testimony of prosecution witnesses. Ocular version has been corroborated by the medical evidence on record, furnished by PW1 Dr. SK Sharma and PW9 Dr. Abhay Verma.

As regards sentence, the victim has suffered severe head injury and remained hospitalised for 10 days. A very liberal view cannot be taken merely on account of lapse of time in view of law laid down by the Hon'ble Supreme Court. In **Hari Krishan and State of Haryana v. Sukhbir Singh,** AIR 1988 SC 2127, it was

observed that the victim should be suitability compensated. Reference may also be made to judgment of Hon'ble the Supreme Court in **T.K.Gopal alias Gopi v. State of Karnataka,** AIR 2000 SC 1669, wherein it was observed that appropriate sentence has to be awarded consistent with and proportionate to the offence. In these circumstances, ends of justice will be met if substantive sentence of imprisonment is reduced subject to compensation being paid to the victim.

Accordingly, the substantive sentence awarded to the appellants is reduced to RI for one year but the appellants are directed to pay compensation of Rs.10,000/- each to the victim. Compensation may be paid within six months from today, either to the injured Mahabir and receipt filed before the trial court or the amount may be deposited before the trial court and the trial court will disburse the same to the injured Mahabir. In default of payment of compensation, the appellants will undergo further RI for six months.

The appeal is disposed of.

April 24, 2007 (Adarsh Kumar Goel)
'gs' Judge